IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Om Prakash. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 1045/2006
against the order dated 20-6-2006 passed
by the Additional Sessions Judge No.3,
Jodhpur,in Criminal Revision No.19/2006.

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Date of Order: November 09, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. P.N. Mohanani, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Mahendra Solanki, for the non-petitioner No.2.

BY THE COURT:

This criminal miscellaneous petition under Section 482 Cr.P.C. is directed against the order dated 20-6-2006 passed by the Additional Sessions Judge No.3, Jodhpur (for short, "the Revisional Court hereinafter) in Criminal Revision No.19/2006, whereby the revision petition filed by the petitioner against the order dated 12-1-2006 passed by the Judicial Magistrate, Pipar City, district Jodhpur (for short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the petitioner, Public Prosecutor for the State and the counsel appearing for the

complainant/non-petitioner No.2. Carefully gone through the orders passed by the trial Court as well as the Revisional Court.

It is contended by the learned counsel for the petitioner that there is no entrustment of the disc plough (Tavis) and, therefore, both the Courts below fell in error in taking cognizance of the offence under Section 406 IPC against the petitioner. It is further contended that the petitioner is the Director of the firm M/s. Goodwill Issar Tractors, Bilara and vide Bill No.103 dated 30-4-2002, the complainant purchased one cultivator with 11 tings and one disc-plough for a sum of Rs.27,000/- and received the same, which is evident from the said bill. I have also gone through copy of the bill which bears the thumb-impression of the complainant regarding receiving the aforesaid items. These items were purchased by the complainant by obtaining the loan from State Bank of Bikaner & Jaipur. As against this amount, the aforesaid bank had issued a cheque in favour of Goodwill Issar Tractors. In the instant case, the complaint was lodged almost after two years from the date of the bill. At any rate, according to the learned counsel for the petitioner, even if the allegations are taken on their face value, the essential ingredients for constituting an offence under Section 406 IPC are not made out against the petitioner.

Learned Public Prosecutor and the counsel appearing for the complainant submit that though the bill bears the thumb-

impression of the complainant as having received the articles mentioned therein, but, in fact, the disc-plough etc. were not given to the complainant and a false plea was made that subsequently the petitioner gave the same to the complainant.

Section 405 IPC pertains to criminal breach of trust and provides that whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly, misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust." Thus, the essential ingredients to construe a criminal breach of trust are that there should be entrustment with property, or with any dominion over property, which is dishonestly misappropriated or converted to his own use by the person who has been entrusted with the property or with any dominion over the property.

In the instant case, none of the ingredients to construe the offence under Section 405 IPC, punishable under Section 406 IPC, is made out, as there is absolutely no evidence that the petitioner was entrusted with the property i.e. the disc-plough or with any dominion over the said disc-plough and he,

having been entrusted with the same, dishonestly misappropriate it, or converted that property for his own use. In the circumstances, therefore, in my view, both the Courts below fell in error in taking cognizance of the offence under Section 406 IPC against the petitioner. In this view of the matter, the impugned order cannot be sustained and liable to be set-aside.

Consequently, the criminal miscellaneous petition is allowed. The order dated 12-1-2006 passed by the trial Court, as also the impugned order dated 20-6-2006 passed by the Revisional Court affirming the order of the trial Court, are set aside and the petitioner is discharged of the offence under Section 406 IPC.

(H.R. PANWAR), J.

mcs